

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN MABREY,

Plaintiff,

v.

WIZARD FISHERIES, INC., *et al.*,

Defendants.

No. C05-1499RSL

ORDER GRANTING IN PART,
DENYING IN PART, AND
RESERVING IN PART
DEFENDANTS' MOTIONS
IN LIMINE

This matter comes before the Court on "Defendants' Motions in Limine" (Dkt. #85). In their motion, defendants present eight separate issues for the Court's consideration. Having reviewed the memoranda submitted by the parties, the Court finds as follows:

1. Theories of negligence attributable to defendants by Dr. Wachsman

In the Court's June 8, 2007 Order, the Court denied defendants' request to exclude Dr. Wachsman's testimony at trial. See Dkt. #103 at 2. Based on this prior ruling, the Court DENIES defendants' motion to exclude the testimony of Dr. Wachsman or "damages and/or theories" based on his testimony. See Motion at 4.

2. Exclude expert opinion testimony not based on facts

In their motion in limine to "exclude any opinions by plaintiff's experts which are not based on the actual facts of the case," defendants do not identify any specific opinion to be

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1 excluded. See Motion at 4. The motion is simply a reiteration of Fed. R. Evid. 702, which
 2 states in part that “a witness qualified as an expert by knowledge, skill, experience, training, or
 3 education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is
 4 based on sufficient facts or data[.]” Without offering a specific opinion to be excluded under
 5 this rule, the Court cannot preemptively grant defendant’s motion in limine. The Court will
 6 exclude evidence under the Federal Rules if warranted at trial. Accordingly, the Court
 7 RESERVES ruling on defendants’ second motion in limine.

8 **3. Limiting plaintiff’s lay witnesses to a reasonable number**

9 In their motion, defendants seek to limit some of plaintiff’s lay witness to a “reasonable
 10 number.” The Court RESERVES ruling on defendants’ third motion in limine until the pretrial
 11 conference on June 27, 2007.

12 **4. Evidence of plaintiff’s medical condition**

13 Defendants move for an order allowing them to present evidence at trial of “plaintiff’s
 14 mental condition at the time of the accidents and during recovery, including prescription and/or
 15 illegal drugs he may have or was taking.” See Motion at 5. Until the testimony and documents
 16 are presented, however, the Court RESERVES ruling on the admissibility of this evidence until
 17 the time of trial.

18 **5. Subsequent remedial measures**

19 Defendants move to exclude evidence of subsequent remedial measures made to the deck,
 20 hatch covers and gear room of the F/V WIZARD and any changes made to the safety policies
 21 and procedures aboard the F/V WIZARD. See Motion at 6. The Court has already concluded
 22 that evidence of subsequent remedial measures would not be considered under Fed. R. Evid.
 23 407. See Dkt. #88 at 3. Accordingly, the Court GRANTS defendants’ motion.

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1 **6. Plaintiff's expert Richard Gill, Ph.D**

2 Defendants move to exclude plaintiff's human factors expert Richard Gill under Daubert
3 v. Merrill Dow Pharms., Inc., 509 U.S. 592 (1993) and based on a lack of foundation. See
4 Motion at 6. Based on Richard Gill's declaration and plaintiff's response, the Court finds Mr.
5 Gill qualified to testify. See Dkt. #94. Accordingly, the Court DENIES defendants' motion to
6 exclude Richard Gill's testimony.

7 **7. Plaintiff's liability expert Charles A. Jacobsen**

8 Defendants also move to exclude any testimony of Charles Jacobsen based on "legal
9 conclusions." See Motion at 9. Under Fed. R. Evid. 704, "testimony in the form of an opinion
10 or inference otherwise admissible is not objectionable because it embraces an ultimate issue to
11 be decided by the trier of fact." Accordingly, the Court DENIES defendants' motion on this
12 basis and DENIES defendants' motion to strike portions of Mr. Jacobsen's report.

13 **8. Plaintiff's vocational expert John Berg**

14 Finally, defendants move to exclude plaintiff's expert John Berg under Daubert v. Merrill
15 Dow Pharms., Inc., 509 U.S. 592 (1993). See Motion at 12. Based on John Berg's declaration
16 and plaintiff's response, the Court finds Mr. Berg qualified to testify. See Dkt. #96.
17 Accordingly, the Court DENIES defendants' motion to exclude John Berg's testimony.

18 For all of the foregoing reasons, "Defendants' Motions In Limine" (Dkt. #85) are
19 GRANTED in part, DENIED in part, and RESERVED in part.
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21 DATED this 27th day of June, 2007.

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24 Robert S. Lasnik
25 United States District Judge

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